

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

PRISCILA L. LOZANO,

Plaintiff,

v.

SOUTH TEXAS FEDERAL CREDIT  
UNION,

Defendant.

CIVIL COMPLAINT

CASE NO. 7:19-cv-00399

DEMAND FOR JURY TRIAL

**COMPLAINT**

**NOW COMES** Priscila L. Lozano (“Plaintiff”), by and through her attorneys, Sulaiman Law Group, Ltd. (“Sulaiman”), complaining of South Texas Federal Credit Union (“Defendant”) as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action seeking redress for violations of the Telephone Consumer Protection Act (“TCPA”) pursuant to 47 U.S.C. §227 and violations of the Texas Debt Collection Act (“TDCA”) pursuant to Tex. Fin. Code Ann. § 392 *et seq.*

2. Subject matter jurisdiction is conferred upon this Court by the TCPA, TDCA, and 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state law claim pursuant to 28 U.S.C. §1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Southern District of Texas, Plaintiff resides in the Southern District of Texas, and a substantial portion of the events or omissions giving rise to the claims occurred within the Southern District of Texas.

**PARTIES**

4. Plaintiff is a consumer and natural person over 18-years-of-age who, at all times

relevant, is a “person” as defined by 47 U.S.C. §153(39).

5. Defendant is engaged in the business of offering credit services and collecting or attempting to collect from consumers, directly or indirectly, debts owed or due using the mail and telephone. Defendant’s principal place of business located at 2121 Dove Avenue, McAllen, Texas 78504.

#### **FACTS SUPPORTING CAUSES OF ACTION**

6. In or around 2017, Plaintiff obtained a car loan from Defendant (“subject debt”).

7. Due to financial hardship, Plaintiff fell behind on payments of the subject debt in or around June 2019.

8. In or around July 2019, Plaintiff started to receive collection phone calls and unsolicited text messages from Defendant to her cellular phone number (956) XXX-4244 attempting to collect the subject debt.

9. At all times relevant, Plaintiff was the sole subscriber, owner, possessor, and operator of her cellular telephone number. Plaintiff is and has always been financially responsible for this telephone and its services.

10. In or around July 2019, Plaintiff answered a call from Defendant and demanded Defendant stop calling and texting her cellular phone number.

11. In the phone calls Plaintiff answered, Plaintiff was greeted by a noticeable period of “dead air” while Defendant’s telephone system attempted to connect Plaintiff to a live agent.

12. Specifically, there would be an approximate 3 second pause between the time Plaintiff said “hello,” and the time that a live agent introduced them self as a representative of Defendant.

13. Failing to acquiesce to Plaintiff’s demand to cease calling and texting her, Defendant continued its phone harassment campaign without Plaintiff’s consent.

14. Frustrated by Defendant's incessant phone calls and text messages, Plaintiff again answered a phone call from Defendant in or around July 2019 and again demanded it cease calling her cellular phone number.

15. Notwithstanding Plaintiff's multiple requests that Defendant cease calling and texting her cellular phone, Defendant placed or caused to be placed numerous phone calls to Plaintiff's cellular phone between June 2019 and the present day.

16. The phone numbers that Defendant most often uses to contact Plaintiff are (956) 618-7500 and (956) 802-0789, but upon information and belief, it may have used other phone numbers to place phone calls to Plaintiff's cellular phone number without her consent.

#### **DAMAGES**

17. Defendant's harassing phone calls and text messages have severely disrupted Plaintiff's daily life and general well-being.

18. Defendant's phone harassment campaign and illegal collection activities have caused Plaintiff actual harm, including but not limited to, invasion of privacy, nuisance, intrusion upon and occupation of Plaintiff's cellular telephone capacity, wasting Plaintiff's time, the increased risk of personal injury resulting from the distraction caused by the phone calls, aggravation that accompanies unsolicited telephone calls, emotional distress, mental anguish, anxiety, loss of concentration, diminished value and utility of telephone equipment and telephone subscription services, the loss of battery charge, and the per-kilowatt electricity costs required to recharge her cellular telephone as a result of increased usage of her telephone services.

19. In addition, each time Defendant placed a telephone call to Plaintiff, Defendant occupied Plaintiff's telephone number such that Plaintiff was unable to receive other phone calls.

20. Concerned about the violations of her rights and invasion of her privacy, Plaintiff was forced to seek the assistance of counsel to file this action to compel Defendant to cease its unlawful conduct.

**COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION**

21. Plaintiff restates and realleges paragraphs 1 through 20 as though fully set forth herein.

22. Defendant repeatedly sent or caused to be sent frequent non-emergency text messages, including by not limited to the messages referenced above, to Plaintiff's cellular telephone number using a telephone facsimile machine ("TFM") or transmitting text without Plaintiff's prior consent in violation of 47 U.S.C. §227 (b)(1)(C).

23. The TCPA defines TFM as "equipment which has the capacity...to transcribe text or images, or both from paper into an electronic signal and to transmit that signal over a regular telephone line." 47 U.S.C. §227(a)(3).

24. Upon information and belief, based on Defendants' frequency and content of the text messages, Defendants used a TFM.

25. Defendant repeatedly placed or caused to be placed frequent non-emergency calls, including but not limited to the calls referenced above, to Plaintiff's cellular telephone number using an automatic telephone dialing system ("ATDS") without Plaintiff's consent in violation of 47 U.S.C. §227 (b)(1)(A)(iii).

26. The TCPA defines ATDS as "equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers." 47 U.S.C. §227(a)(1).

27. Upon information and belief, based on Defendant's lack of prompt human response during the phone calls in which Plaintiff answered, Defendant used an ATDS to place calls to Plaintiff's cellular telephone.

28. As discussed above, based on Defendant's lack of prompt human response during the phone calls in which Plaintiff answered, Defendant used an ATDS to place calls to Plaintiff's cellular telephone.

29. Upon information and belief, the ATDS employed by Defendant transfers the call to a live agent once a human voice is detected, thus resulting in a pause after the called party speaks into the phone.

30. Upon information and belief, Defendant's phone system stores telephone numbers to be called, using a random or sequential number generator, which it used to call Plaintiff on her cellular phone.

31. Defendant violated the TCPA by placing numerous phone calls and text messages to Plaintiff's cellular telephone between June 2019 and the present day, using an ATDS without her consent.

32. Any prior consent, if any, was revoked by Plaintiff's verbal revocation.

33. As pled above, Plaintiff was severely harmed by Defendant's collection calls and text messages to her cellular phone.

34. Upon information and belief, Defendant has no system in place to document and archive whether it has consent to continue to contact consumers on their cellular phones.

35. Upon information and belief, Defendant knew its collection practices were in violation of the TCPA, yet continued to employ them to increase profits at Plaintiff's expense.

36. Defendant, through its agents, representatives, vendors, subsidiaries, third party contractors and/or employees acting within the scope of their authority acted intentionally in violation of 47 U.S.C. §227(b)(1)(A)(iii).

37. Pursuant to 47 U.S.C. §227(b)(3)(B), Defendant is liable to Plaintiff for a minimum of \$500 per phone call. Moreover, pursuant to 47 U.S.C. §227(b)(3)(C), Defendant's willful and knowing violations of the TCPA triggers this Honorable Court's discretion to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. §227(b)(3)(C).

**WHEREFORE**, Plaintiff PRISCILA L. LOZANO respectfully prays this Honorable Court for the following relief:

- a. Declare Defendant's phone calls to Plaintiff to be violations of the TCPA;
- b. Award Plaintiff damages of at least \$500 per phone call and treble damages pursuant to 47 U.S.C. § 227(b)(3)(B)&(C); and
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Enjoining Defendant from further contacting Plaintiff; and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

**COUNT II – VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT**

38. Plaintiff restates and reallages paragraphs 1 through 34 as through fully set forth herein.

39. Plaintiff is a "consumer" as defined by Tex. Fin. Code Ann. § 392.001(1).

40. The alleged debt is a "debt" and a "consumer debt" as defined by Tex. Fin. Code Ann. § 392.001(2) as it is an obligation, or alleged obligation, arising from a transaction for personal, family, or household purposes.

41. Defendant is a "debt collector" as defined by Tex. Fin. Code Ann. § 392.001(6) and (7).

**a. Violations of TDCA § 391.302**

42. The TDCA, pursuant to Tex. Fin. Code Ann. § 392.302(4), states that “a debt collector may not oppress, harass, or abuse a person by causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.”

43. Defendant violated the TDCA when it called and texted Plaintiff repeatedly despite her multiple requests that the calls cease. The repeated calls were made with the hope that Plaintiff would succumb to the harassing behavior and ultimately make a payment on the subject debt.

**WHEREFORE**, Plaintiff PRISCILA L. LOZANO requests that this Honorable Court:

- a. Declare that the practices complained of herein are unlawful and violate the aforementioned statute;
- b. Entitling Plaintiff to injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1);
- c. Award Plaintiff actual damages, pursuant to Tex. Fin. Code Ann. § 392.403(a)(2);
- d. Award Plaintiff punitive damages, in an amount to be determined at trial, for the underlying violations;
- e. Award Plaintiff costs and reasonable attorney fees as provided under Tex. Fin. Code Ann. § 392.403(b) ; and
- f. Award any other relief as the Honorable Court deems just and proper.

**Plaintiff demands trial by jury.**

Dated: December 3, 2019

Respectfully Submitted,

/s/ Marwan R. Daher

/s/ Alexander J. Taylor

/s/ Omar T. Sulaiman

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